GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR SECRETARIAT

Labour Dispute: Industrial dispute between the workmen and the Management of Hindustan Aeronautics Ltd., Bangalore.

Award of the Presiding Officer, Labour Court, Bangalore, published.

Read the following papers:

1. Letter No. 1972/77-78, dated 9th February 1978 from Sri H. Shanmukhappa, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this the 9th day of February 1978.

Present

Shri. H. Shanmukhappa, B. A., B. L.,

Presiding Officer

Reference No. 41 of 1975

First Party :—

V. M. Balasubramanian, No. 29, Old Poor House Road Behin Shyam Medical Stores, Bangalore-560 001 (A).

vs.

Second Party :—

The Management of Hindustan Aeronautics Limited, H. A. L., Bangalore-560 017.

References:—Government Order No. SWL 158 LLD 75, dated 6th May 1975.

AWARD

1. The Government of Kanataka in their Order No. SWL 158 LLD 75, dated 6th May, 1975, have referred an industrial dispute under S. 10 (1) (c) of the Industrial Disputes Act, 1947, existing between the above named parties to this Court for adjudication on the points of dispute noted below :—

"Are the management of Hindustan Aeronautics Ltd., Bangalore justified in treating Sri V. N. Balasubramanian, an ex-employee as having lost lien on his appointment with effect from 29th June 1973 under clause 18 (ii) of their Standing Orders?

If not, to what reliefs the workman is entitled?"

2. On receipt of reference, it was registered as Reference No. 41 of 1975 and notices were issued to the parties to file their statements,

The I Party workman filed his claim statement on 4th June 1975 and the II Party management has filed their counter-statement on 6th October 1975. On 19th March 1976 the II Party management has examined their Personnel Officer, as M. W. 1. That day M. W. 1 was examined only in-chief and his cross-examination was adjourned as I Party was absent on that day. Thereafter I Party took time to cross-examine M. W. 1. But though sufficient opportunity was given the I Party did not cross-examine M. W. 1. Further, neither the I Party workman nor his counsel had put in appearance since 14th March 1977, but chose to remain absent continuously: Therefore, on 19th April M. W. 1 was discharged. Even thereafter the I Party as well as his counsel did not appear but remained absent throughout. The I Party has also not let in any evidence on his behalf. In the circumstances, I am constrained to proceed under Rule 23 of the Industrial Disputes (Karnataka) Rules. 1957, as if the I Party was present and had been duly represented.

3. The I Party in his claim statment has stated that he had joined the II Party on 11th August 1964 as Welder-B and his services were unjustly terminated by the management w. e. f. 29th June 1973 as having lost his lien on appointment. He says he had put in honest service. He had submitted that due to acute bronchitis he was suddenly and seriously ill and laid up from 19th June 1973 to 3rd July 1973 and was under medical treatment and therefore could not attend the factory during the said period. However, on 3rd July 1973 when he got a little better he reported for duty and submitted his leave application duly supported by medical certificate. He was not taken on duty but was issued a notice, dated 2nd July 1973 stating that he had absented himself for more than 10 days from 19th June 1973 without permission and had therefore lost his lien on appointment under Standing Order 18 (ii) with effect from 29th June 1973 and he was asked to submit his explanation. He had submitted his explanation on 5th July 1973. But without accepting the said explanation and without holding any enquiry in the matter, the II Party sent a letter, dated 25th July 1973 to him saying that they had terminated his services with effect from 29th June 1973 for alleged loss of lien on appointment under Standing Order 18(ii) of the company. The I Party submitted that this termination from service is unjust, illegal and *malafide*. His absence from duty was unaviodable and due to *bona-fide* cause and therefore the II Party was not right in invoking the provisions of Standing Order 18(ii). He prayed for his reinstatement, continuity of service and back wages.

4. The II Party in their counter-statement have stated that the I Party absented himself without permission w.e.f. 19th June 1973 o 2nd July 1973 and therefore they had issued him a notice dated 2nd July 1973 calling upon him to submit his explanation for his

unauthorised absence. The I Party submitted his explanation on 5th July 1973. with a medical certificate dated 3rd July 1973. That explanation was considered by the management and was not found to be satisfactory. Therefore, the II Party confirmed the I Party's loss of lien on his appointment and the same was communicated to him by letter, dated 25th July 1975. The decision is *bona fide* and does not call for any interference by this Court, It is also stated that the I Party had preferred an appeal to the General Manager of the company who found no grounds for interference with the termination order. It is further stated that Standing Order 18(ii) of the company proved that if a workman remains absent for more than 10 days or absents himself beyond that period of leave originally granted or subsequently extended, he shall lose his lien on his appointment, unless he returns within 10 days of the expiry of the notice of termination and explains to the satisfaction of the management the reasons for his inability to return before the expiry of leave. It follows, therefore, that if the explanation is not submitted within 10 days or if the explanation so submitted within ten days is not found to be satisfactory by the management, the services of the employee terminates automatically on the ground of loss of lien and therefore an order passed by the management in this regard is not justifiable. The II Party management also denied that the I Party workman's services were honest and sincere. The II Party has stated that even in the past the I Party was unauthorisedly absent for quite a number of days and that even he was suspended for four days in the year 1971. It is further submitted that in the explanation, the I Party has stated that he thought that he could apply for leave with medical certificate at the time of reporting for duty and that, therefore, he did not apply for leave at the right time. There is no basis for such thinking in the face of the Standing Orders. II Party has also stated that there is no demand for reinstatement by the I Party on the II Party and hence there is no industrial disputes available for reference, and hence the reference itself is incompetent. In the circumstances, the II Party prayed for the dismissal of the reference.

5. The main question that therefore arises for consideration is whether the II Party is justified in treating I Party as having lost lien on his appointment w.e.f. 29th June 1973 under clause 18(ii) of their Standing Orders?

6. M.W. 1 V. N. Balasubramanian in his evidence has stated that he is the Personnel Officer in the Aircraft Division of the II Party He knows the I Party workman and he had dealt with his papers. I Party absented himself in the month of June 1973 without applying for any leave for more than 10 days consecutively from 19th June 1973. The concerned Section Head reported the matter to the Personnel office. Then they served loss of lien notice on the I Party workman as per Ex. M. 1. Ex. M.2 is the copy of the reply sent by

the I Party and Ex. M. 2 was not dated. Explanation Ex. M.2 was not satisfactory. Therefore they recommended to the Departmental Head for removal of his name confirming loss of lien. The Departmental Head gave approval for confirmation of loss of lien as per Ex. M. 3 Note sheet. As per Ex. M. 4 I Party's explanation was considered and communication was sent to him confirming the loss of lien. Ex. M. 5 is the appeal made by I Party to the General Manager and that appeal was dismissed as per Ex. M. 6. The employee's past record was also not satisfactory. As per Ex. M. 7 I Party progress increment was deferred. Ex. M. 6 was warning notice issued to I Party. Ex. M. 9 is the suspension notice and its enclosure is Ex. M. 10. Ex. M. 11 is the another memo issued to I Party. He further says that I Paty's attendance was very bad.

7. I have no reason to disbelieve the version of M.W. 1 which is supported by Ex. M 1 to M–11 and also his version stands unrebuted. As already stated the I Party workman has not evinced any interest and has not let in any evidence worth the name In support of his case. I have perused M–1 to M–11 documents marked on behalf of the II party and find that all the procedures have been followed in case of I Party workman. There are no materials to hold that II Party was not justified in treating I Party workman as having lost lien on his appointment w.e.f. 29th June 1973 under clause 18(ii) of their Standing Orders. I therefore, hold that the action of the II Party management is justified.

8. In the result, the reference is rejected. No order as to costs.

H. SHANMUKHAPPA,
Presiding Officer,
Labour Court, Bangalore.

Order No. SWL 50 LLA 78
Bangalore, dated 13th March 1978.

Whereas by State Government Order No. SWL 158 LLD 75, dated 6th May 1975 the Industrial Dispute between the workmen and the management of Hindustan Aeronautics Ltd., Bangalore was referred to the Labour Court, Bangalore for adjudication;

And, whereas, the Presiding Officer, Labour Court, Bangalore, has submitted to the State Government its award in respect of the said Industrial Dispute;

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above, in the *Karnataka Gazette.*

By Order and in the name of the Governor of Karnataka,

B. MANAMOHAN,
Under Secretary to Government,
Social Welfare and Labour Department.

2700—S.O. 783